IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 415 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA :

HONOURABLE MR.JUSTICE KS JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge

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CHAVDA SURYABA ZILUJI KESHAJI - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

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Appearance :
MR ASHISH M DAGLI for Appellant(s) : 1,
MR KP RAVAL APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 17/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1.0 This appeal is directed against the judgment and order dated 25th January, 2007 passed by the learned Addl. District & Sessions Judge, Gandhinagar in Sessions Case No. 89 of 2006 whereby, the appellant was convicted for the offences punishable u/s. 498-A and 302 of the Indian Penal Code [for short, "the IPC"]. For conviction u/s. 498-A of IPC, the appellant was sentenced to undergo Rigorous Imprisonment for three years with fine of Rs.500/- and in default of payment of fine, simple imprisonment for a further period of one month; while for conviction u/s. 302 of IPC, the appellant was sentenced to undergo imprisonment for life with fine of Rs.500/- and in default of payment of fine, simple imprisonment for a further period of one month. Both the sentences were ordered to run concurrently.

2.0 The short facts of the prosecution case are as under;

On 21.06.2006 at about 7.00 p.m., while the deceased was preparing food in her house situated in Rangpur Village of Gandhinagar District, at that time, the appellant - mother-in-law of the deceased, poured kerosene on the deceased and, thereafter,

set the deceased ablaze by a burning wooden stick. As a result thereof, the deceased shouted for help and on hearing the shouts, the husband of the deceased came to the place of incident and tried to set-off the fire. However, by that time, the deceased suffered severe burn injuries and the husband also suffered burn injuries on both his hands and on the face. Therefore, the deceased was taken to a private Hospital in Gandhinagar and, later, was shifted to the Apollo Hospital, Gandhinagar.

2.1 The said Hospital sent a telephonic 'vardhi' to the police authority of Mansa Police Station. On receiving the same, the police authority came to the said Hospital and recorded a detailed F.I.R., as narrated by the deceased. The same was registered as I - C.R. No.99 of 2006 for offences punishable u/s. 498-A and 307 of IPC. As the medical condition of the deceased was deteriorating, the Investigating Officer sent a 'yaadi', along with the opinion of the concerned Doctor, to the Executive Magistrate for recording the Dying Declaration of the deceased. Thereafter, the Executive Magistrate recorded the Dying Declaration of the deceased. Later, the deceased was shifted to the Civil Hospital at Ahmedabad.

Where during the course of treatment, the deceased succumbed to her injuries and, therefore, offence u/s. 302 of IPC was added and 'purshis' to that effect was submitted before the Court of learned Judicial Magistrate, First Class, Mansa.

2.2 Thereafter, the police authorities filled up the 'Marnottar' Form and the dead body of the deceased was sent for performing Post-mortem along with the 'Yaadi', 'Marnottar' Form and the Inquest 'Panchnama'. Post-mortem was performed and the clothes that were worn by the deceased at the time of the incident were seized by way of a separate 'Panchnama'.

2.3 The Investigating Officer carried out further investigation into the matter and also prepared the 'Panchnama' of the scene of offence in the presence of 'Panchas'. Statement of several witnesses were recorded. Thereafter, the appellant was arrested and was later sent to judicial custody. The 'muddamal' articles were sent to F.S.L.. On receipt of the F.S.L. Report, PM Note and other papers, the same were kept along with the investigation papers.

2.4 At the end of investigation, the Investigating Officer submitted charge-sheet in the Court of learned Judicial Magistrate, First Class, Mansa and as the case was exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, Mansa committed the case to the Sessions Court, Gandhinagar and it was numbered as Sessions Case No. 89 of 2006 and the same was transferred to the Court of learned Addl. District & Sessions Judge, Gandhinagar.

2.5 On production of the appellant, the learned Addl. District & Sessions Judge framed the charge and as the appellant pleaded not guilty to the said charge, trial was conducted. To prove the guilt against the appellant, the prosecution has examined the following witnesses;

- PW – 1, Vijaykumar Manubhai Bihola at Exhibit – 05, is the cousin brother of the deceased.

- PW – 2, Dr. Siddharth Rajendrabhai at Exhibit – 6, is the

Doctor of Apollo Hospital, Gandhinagar who gave necessary treatment to the deceased.

- PW – 3, Niranjan Bhavanishankar Gaur at Exhibit – 8, is the Executive Magistrate who recorded the Dying Declaration of the deceased at Exhibit – 10.

- PW – 4, Natvarsingh Laxmansingh Chavda at Exhibit – 11, is a 'Panch' witness of the 'Panchnama' at Exhibit - 12.

- PW – 5, Dr. Ashokkumar Janakilal at Exhibit – 13, is the Medical Officer who was discharging his duties at Civil Hospital, Gandhinagar and who had given the initial treatment to the deceased.

- PW – 6, Dr. Bhavin Shyamlal Shah at Exhibit – 26 performed the post-mortem of the body of the deceased.

- PW – 7, Vinodbhai Ranchodbhai Patel at Exhibit – 29, is the P.S.I. and the Investigating Officer.

- PW – 8, Ishwarbhai Varvabhai at Exhibit – 37, is the P.S.O. who had registered the complaint in question.

2.6 The prosecution has also placed reliance upon several documentary evidences and, more particularly, the evidences in the form of F.I.R. at Exhibit – 30, Dying Declaration at Exhibit – 10, Inquest 'Panchnama' at Exhibit – 15, 'Panchnama' of the scene of offence at Exhibit – 12 and the PM Note at Exhibit – 28.

2.7 On submission of the closing 'purshis', the learned Addl. District & Sessions Judge recorded the further statement of the appellant u/s. 313 of the Code of Criminal Procedure, 1973 wherein, she has denied her guilt and has requested the Court to consider the evidence of two other witnesses as defense witnesses. Accordingly, the Court below recorded the evidence of the said two defense witnesses as DW – 1 at Exhibit – 42 and DW – 2 at Exhibit – 44. After hearing learned counsel for the respective parties, the learned Addl. District & Sessions Judge delivered the impugned judgment and convicted the appellant as stated

hereinabove. Being aggrieved and dissatisfied by the same, the appellant has approached this Court by way of this Appeal.

3.0 Learned Advocate for the appellant has contented that there are material contradictions in both the Dying Declarations, viz. the F.I.R. at Exhibit – 30 and the statement given by the deceased before the Executive Magistrate at Exhibit – 10 and, therefore, they are not reliable. Hence, the Court below ought not to have relied upon the same for recording conviction of the appellant. Learned Advocate has further contented that except the aforesaid two Dying Declarations, there is no other evidence on record which could remotely connect the appellant with the crime in question.

3.1 Learned Advocate has further contented that from the evidence of the husband of the deceased, it is clearly established that the prosecution has failed to prove beyond doubt that the appellant has committed the offence in question. He has submitted that when the husband of the deceased reached the scene of offence, the deceased was completely bathed in kerosene and that

the husband has not at all supported the prosecution story so far as the role of the appellant pursuant to the pouring of kerosene on the deceased is concerned.

3.2 Learned Advocate has further contented that the presence of the husband of the deceased at the scene of offence is a natural one and that in spite of the same the prosecution has not examined him as a witness. However, he has been examined as DW – 1 at Exhibit – 42 on the request made by the appellant while recording her further statement u/s. 313 of the Cr.P.C.. Learned Advocate has, therefore, submitted that from the evidence on record, the prosecution has failed to establish beyond doubt that the appellant is guilty of the offence in question. No other contentions have been raised by learned Advocate for the appellant.

4.0 When the matter came up for admission hearing, Mr. A. M. Dagli learned Advocate for the appellant requested that the matter may be adjourned to some other date as he is desirous to go through the Records & Proceedings. Therefore, with a view to

protect the interest of the appellant, the matter was adjourned, so as to enable learned Advocate for the appellant to go through the Records & Proceedings. Ultimately, the matter was finally heard today.

5.0 We have gone through the entire oral as well as documentary evidence produced on record. From the record, it appears that at the time of the incident, the marriage life of the deceased was around eleven years. Therefore, the prosecution will not get the benefit of presumption under the provisions of the amended law. In that view of the matter, the prosecution has to prove the allegations levelled against the appellant, including the allegations of alleged mental and physical torture, beyond doubt to prove the guilt against the appellant.

6.0 It appears from the record that the marriage of the son of the appellant with the deceased was the second marriage of the son and that the earlier wife of the son had also met with a fate similar to that of the deceased. The prosecution has relied upon two Dying Declarations, viz. the F.I.R. at Exhibit – 30 and the Dying

Declaration recorded by the Executive Magistrate at Exhibit – 10 in order to prove their case.

6.1 The Dying Declaration in the form of F.I.R. at Exhibit – 30 is an exhaustive one wherein, the deceased has narrated each and every aspect of the incident, including the role of the appellant and her son, i.e. the husband of the deceased, in detail. In the said F.I.R., the deceased has categorically stated that when she shouted for help, at that time, her husband entered the house and, thereafter, tried to rescue her by setting-off the fire. The evidence on record also supports the case of the prosecution since it can be seen that the husband of the deceased also suffered burn injuries on the hands and on the face when he tried to rescue the deceased. The Dying Declaration recorded by the Executive Magistrate at Exhibit – 10 has been recorded in the prescribed form, i.e. in the Question – Answer format. Therefore, whatever the deceased has narrated in her Dying Declaration at Exhibit – 10, the same was stated in the context of the Questions put forward by the Executive Magistrate at the relevant point of time. On a plain reading of both the Dying Declarations, we find nothing

incriminating which may lead us to believe them to be unreliable or untrustworthy.

7.0 Thus, from the evidence discussed herein above, we have no hesitation in holding that the incident in question took place at about 1900 hrs. and that the husband of the deceased was present at the scene of offence at the relevant point of time. On the contrary, the deceased herself has narrated about the role of the husband in the entire incident, which is a limited one, i.e. to rescue her from the burn injuries.

8.0 From the above, we could draw an inference that at the time of recording of the Dying Declarations, the deceased was in a complete conscious state of mind. The same is also supported by the endorsement made by the Doctor on the 'yaadi' sent by the Investigating Officer for the purpose of calling the Executive Magistrate to record the Dying Declaration of the deceased. In both the Dying Declarations, the deceased has narrated the role of the appellant in detail and, therefore, we are unable to accept the contention raised by the learned counsel for the appellant that

there are material contradictions in both the Dying Declarations. It is a settled principle of law that Dying Declarations do not require any corroboration if they are found to be reliable and trustworthy. In the case on hand, having considered the entire evidence on record, we find both the Dying Declarations to be trustworthy and free from all doubts and, therefore, we could rely upon the same and conviction can be based on it.

9.0 Over and above, there are other evidences on record, i.e. the evidence of the Executive Magistrate as well as of the Investigating Officer, which supports the case of the prosecution. Nothing contrary has come on record from the evidences of these two witnesses. Not only that the evidence of the son of the appellant, who has been examined as DW – 1, clearly states that on hearing some arguments between the appellant and the deceased, he went inside the house and, at that time, he noticed that the deceased was completely bathed in kerosene. So far as the remaining part of the incident is concerned, this witness has not supported the say of the prosecution. Thus, from the evidence of this witness, it is clearly established that at the time of the

incident, DW – 1 as well as the deceased, both were present in the house.

10.0 It is true that DW – 1 arrived at the scene of offence at a later stage only. In our opinion, the case of the prosecution does not become weak if the prosecution has not examined this witness or has not placed reliance upon his evidence to prove their case since it is their right to decide as to whom they shall examine as a witness in the case. Be that as it may, the fact remains that the presence of both the appellant as well as the husband of the deceased at the scene of offence has been clearly established. It is also required to be noted that the incident in question took place in the house of the deceased which is situated in an agricultural field and, therefore, the presence of independent witnesses at the scene of offence, could not be insisted. Thus, we solely rely upon the evidence of the Doctor and the Investigating Officer, who are independent witnesses in this case.

11.0 So far as the aspect of homicidal death is concerned, the same has not been disputed by the other side. Even otherwise,

the evidence on record in the form of the PM Note, the Inquest 'Panchnama' and the evidence of the Doctor, firmly lead us to believe this to be a case of homicidal death. Considering the facts and circumstances of the case and the evidence on record, we are of the opinion that the prosecution has proved beyond doubt the guilt against the appellant. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below and, therefore, find no reasons to interfere in this appeal. Hence, the appeal deserves to be dismissed.

12.0 In the result, the appeal is dismissed. The impugned judgment and order dated 25th January, 2007 passed by the learned Addl. District & Sessions Judge, Gandhinagar in Sessions Case No. 89 of 2006 is confirmed.

[R. P. Dholakia, J.] [K. S. Jhaveri, J.]

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